

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 871

Introduced by Kruse, 13; Aguilar, 35; Brown, 6; Burling, 33;
Combs, 32; Engel, 17; Hudkins, 21; Jones, 43;
Kremer, 34; Louden, 49; Mossey, 3; Quandahl, 31;
Redfield, 12

Read first time January 7, 2004

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to driving under the influence; to amend
2 sections 28-106, 28-306, 60-601, and 60-6,197.01, Revised
3 Statutes Supplement, 2002, and sections 60-4,110 and
4 60-4,118.06, Revised Statutes Supplement, 2003; to change
5 penalty provisions for Class W misdemeanors and motor
6 vehicle homicide; to require seizure of motor vehicles as
7 prescribed; to change provisions relating to use of an
8 operator's license with an ignition interlock device; to
9 create the offense of aggravated driving under the
10 influence; to provide penalties; to harmonize provisions;
11 and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-106, Revised Statutes Supplement,
2 2002, is amended to read:

3 28-106. (1) For purposes of the Nebraska Criminal Code
4 and any statute passed by the Legislature after the date of passage
5 of the code, misdemeanors are divided into seven classes which are
6 distinguished from one another by the following penalties which are
7 authorized upon conviction:

8 Class I misdemeanor..... Maximum -- not more than one year
9 imprisonment, or one thousand dollars
10 fine, or both

11 Minimum -- none

12 Class II misdemeanor..... Maximum -- six months imprisonment, or
13 one thousand dollars fine, or both

14 Minimum -- none

15 Class III misdemeanor..... Maximum -- three months imprisonment,
16 or five hundred dollars fine, or both

17 Minimum -- none

18 Class IIIA misdemeanor.... Maximum -- seven days imprisonment,
19 five hundred dollars fine, or both

20 Minimum -- none

21 Class IV misdemeanor..... Maximum -- no imprisonment, five
22 hundred dollars fine

23 Minimum -- one hundred dollars fine

24 Class V misdemeanor..... Maximum -- no imprisonment, one hundred
25 dollars fine

26 Minimum -- none

27 Class W misdemeanor..... Driving while intoxicated -- implied
28 consent refusal

1 First conviction
2 Maximum -- sixty days imprisonment and
3 five hundred dollars fine
4 Mandatory minimum -- seven days
5 imprisonment and four hundred dollars
6 fine
7 Second conviction
8 ~~Maximum -- ninety days imprisonment and~~
9 ~~five hundred dollars fine~~
10 Maximum -- six months imprisonment and
11 five hundred dollars fine
12 Mandatory minimum -- thirty days
13 imprisonment and five hundred dollars
14 fine
15 Third conviction
16 Maximum -- one year imprisonment and
17 six hundred dollars fine
18 Mandatory minimum -- ninety days
19 imprisonment and six hundred dollars
20 fine

21 (2) Sentences of imprisonment in misdemeanor cases shall
22 be served in the county jail, except that in the following
23 circumstances the court may, in its discretion, order that such
24 sentences be served in institutions under the jurisdiction of the
25 Department of Correctional Services:

26 (a) If the sentence is for a term of one year upon
27 conviction of a Class I misdemeanor;

28 (b) If the sentence is to be served concurrently or

1 consecutively with a term for conviction of a felony; or

2 (c) If the Department of Correctional Services has
3 certified as provided in section 28-105 as to the availability of
4 facilities and programs for short-term prisoners and the sentence
5 is for a term of six months or more.

6 Sec. 2. Section 28-306, Revised Statutes Supplement,
7 2002, is amended to read:

8 28-306. (1) A person who causes the death of another
9 unintentionally while engaged in the operation of a motor vehicle
10 in violation of the law of the State of Nebraska or in violation of
11 any city or village ordinance commits motor vehicle homicide.

12 (2) Except as provided in subsection (3) of this section,
13 motor vehicle homicide is a Class I misdemeanor.

14 (3) (a) If the proximate cause of the death of another is
15 the operation of a motor vehicle in violation of section 60-6,213
16 or 60-6,214, motor vehicle homicide is a Class IIIA felony.

17 (b) If the proximate cause of the death of another is the
18 operation of a motor vehicle in violation of section 60-6,196,
19 motor vehicle homicide is a Class IIIA felony. The court shall, as
20 part of the judgment of conviction, order the person not to drive
21 any motor vehicle for any purpose for a period of at least ~~sixty~~
22 ~~days~~ one year and not more than fifteen years and shall order that
23 the operator's license of such person be revoked for the same
24 period.

25 (c) If the proximate cause of the death of another is the
26 operation of a motor vehicle in violation of section 60-6,196,
27 motor vehicle homicide is a Class III felony if the defendant has a
28 prior conviction under section 60-6,196, under a city or village

1 ordinance enacted pursuant to such section, or under a law of
2 another state if, at the time of the conviction under the law of
3 such other state, the offense for which the defendant was convicted
4 would have been a violation under section 60-6,196. The court
5 shall, as part of the judgment of conviction, order the person not
6 to drive any motor vehicle for any purpose for a period of at least
7 ~~sixty days~~ one year and not more than fifteen years and shall order
8 that the operator's license of such person be revoked for the same
9 period.

10 (d) An order of the court described in subdivision (b) or
11 (c) of this subsection shall be administered upon sentencing, upon
12 final judgment of any appeal or review, or upon the date that any
13 probation is revoked, whichever is later.

14 Sec. 3. Section 60-4,110, Revised Statutes Supplement,
15 2003, is amended to read:

16 60-4,110. (1) Every motor vehicle, regardless of the
17 registered owner of the motor vehicle, being operated by a person
18 whose operator's license has been suspended, revoked, or impounded
19 pursuant to a conviction or convictions for violation of section
20 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02 or by an order of
21 any court or an administrative order of the director is hereby
22 declared a public nuisance. The motor vehicle ~~may~~ shall be seized
23 upon the arrest of the operator of the motor vehicle and impounded
24 at the expense of the owner of the motor vehicle. If such
25 operator's license is suspended, revoked, or impounded pursuant to
26 section 60-498.01, 60-498.02, 60-6,196, 60-6,197, 60-6,211.01, or
27 60-6,211.02, the motor vehicle shall be impounded for not less than
28 ten days nor more than thirty days. No motor vehicle impounded

1 under this section shall be impounded for a period of time
2 exceeding thirty days except as provided in subsection (3) of this
3 section.

4 (2) Any motor vehicle impounded shall be released:

5 (a) To the holder of a bona fide lien on the motor
6 vehicle executed prior to such impoundment when possession of the
7 motor vehicle is requested as provided by law by such lienholder
8 for purposes of foreclosing and satisfying his or her lien on the
9 motor vehicle;

10 (b) To the titled owner of the motor vehicle when the
11 titled owner is a lessor. Upon learning the address or telephone
12 number of the rental or leasing company which owns the motor
13 vehicle, the impounding law enforcement agency shall immediately
14 contact the company and inform it that the motor vehicle is
15 available for the company to take possession; or

16 (c) To the registered owner, a registered co-owner, or a
17 spouse of the owner upon good cause shown by an affidavit or
18 otherwise to the court before which the complaint is pending
19 against the operator that the impounded motor vehicle is essential
20 to the livelihood of the owner, co-owner, or spouse or the
21 dependents of such owner, co-owner, or spouse.

22 (3) Any person who, at the direction of a peace officer,
23 tows and stores a motor vehicle pursuant to this section shall have
24 a lien upon such motor vehicle while in his or her possession for
25 reasonable towing and storage charges and shall have a right to
26 retain such motor vehicle until such charges are paid.

27 (4) If the registered owner of a motor vehicle was not
28 the operator of the motor vehicle whose actions caused the motor

1 vehicle to be impounded, the registered owner of the motor vehicle
2 may recover civilly from the operator of the motor vehicle all
3 expenses incurred by reason of the impoundment. In the case of a
4 criminal action, the court may order such operator of the motor
5 vehicle to pay restitution to the registered owner in an amount
6 equal to any expenses incurred with respect to impoundment.

7 Sec. 4. Section 60-4,118.06, Revised Statutes
8 Supplement, 2003, is amended to read:

9 60-4,118.06. (1) Upon receipt by the director of (a) a
10 certified copy of a court order issued pursuant to section
11 60-6,211.05, (b) sufficient evidence that the person has
12 surrendered his or her operator's license to the Department of
13 Motor Vehicles and installed an approved ignition interlock device
14 in accordance with such court order, and (c) payment of the fee
15 provided in section 60-4,115, such person may apply for
16 reinstatement of his or her eligibility for an operator's license
17 following the passage of thirty days of the ninety-day revocation
18 period under section 60-498.02 and the director shall issue to such
19 person a Class O license restricted to the operation of a motor
20 vehicle equipped with an ignition interlock device. The department
21 shall not issue such a license to any person convicted of a second
22 or subsequent violation of section 60-6,196 or 60-6,197 until at
23 least one year of the operator's license revocation or impoundment
24 has elapsed.

25 (2) Upon expiration of the court order issued pursuant to
26 section 60-6,211.05 or an order issued by the Board of Pardons
27 pursuant to section 83-1,127.02, a person may apply to the
28 department in writing for issuance of an operator's license which

1 does not contain such restriction. Regardless of whether the
2 license surrendered by such person under subsection (1) of this
3 section has expired, the person shall apply for a new operator's
4 license pursuant to the Motor Vehicle Operator's License Act.

5 Sec. 5. Section 60-601, Revised Statutes Supplement,
6 2002, is amended to read:

7 60-601. Sections 60-601 to 60-6,377 and section 7 of
8 this act shall be known and may be cited as the Nebraska Rules of
9 the Road.

10 Sec. 6. Section 60-6,197.01, Revised Statutes
11 Supplement, 2002, is amended to read:

12 60-6,197.01. Upon conviction for a second or subsequent
13 violation of section 60-6,196 or 60-6,197, the court shall impose
14 either of the following restrictions on all motor vehicles owned by
15 the person so convicted:

16 (1)(a) The court shall order the motor vehicle or motor
17 vehicles immobilized at the owner's expense for a period of time
18 not less than five days and not more than eight months and shall
19 notify the Department of Motor Vehicles of the period of
20 immobilization. Any immobilized motor vehicle shall be released to
21 the holder of a bona fide lien on the motor vehicle executed prior
22 to such immobilization when possession of the motor vehicle is
23 requested as provided by law by such lienholder for purposes of
24 foreclosing and satisfying such lien. If a person tows and stores
25 a motor vehicle pursuant to this subdivision at the direction of a
26 peace officer or the court and has a lien upon such motor vehicle
27 while it is in his or her possession for reasonable towing and
28 storage charges, the person towing the vehicle has the right to

1 retain such motor vehicle until such lien is paid. For purposes of
2 this subdivision, immobilized or immobilization means revocation or
3 suspension, at the discretion of the court, of the registration of
4 such motor vehicle or motor vehicles, including the license plates;
5 and

6 (b) (i) Any immobilized motor vehicle shall be released by
7 the court without any legal or physical restraints to any
8 registered owner who is not the registered owner convicted of a
9 second or subsequent violation of section 60-6,196 or 60-6,197 if
10 an affidavit is submitted to the court by such registered owner
11 stating that the affiant is employed, that the motor vehicle
12 subject to immobilization is necessary to continue that employment,
13 that such employment is necessary for the well-being of the
14 affiant's dependent children or parents, that the affiant will not
15 authorize the use of the motor vehicle by any person known by the
16 affiant to have been convicted of a second or subsequent violation
17 of section 60-6,196 or 60-6,197, that affiant will immediately
18 report to a local law enforcement agency any unauthorized use of
19 the motor vehicle by any person known by the affiant to have been
20 convicted of a second or subsequent conviction of section 60-6,196
21 or 60-6,197, and that failure to release the motor vehicle would
22 cause undue hardship to the affiant.

23 (ii) A registered owner who executes an affidavit
24 pursuant to subdivision (1) (b) (i) of this section which is acted
25 upon by the court and who fails to immediately report an
26 unauthorized use of the motor vehicle which is the subject of the
27 affidavit is guilty of a Class IV misdemeanor and may not file any
28 additional affidavits pursuant to subdivision (1) (b) (i) of this

1 section.

2 (iii) The department shall adopt and promulgate rules and
3 regulations to implement the provisions of subdivision (1) of this
4 section; or

5 (2) As an alternative to subdivision (1) of this section,
6 the court shall order the installation of an ignition interlock
7 device on each of the owner's motor vehicles if the owner was
8 sentenced to an operator's license revocation of at least one year
9 and has completed at least one year of such revocation. No license
10 reinstatement may occur until sufficient evidence is presented to
11 the department that an ignition interlock device is installed on
12 each vehicle and that the applicant is eligible for use of an
13 ignition interlock device. The installation of an ignition
14 interlock device shall be for a period not less than six months
15 commencing upon the end of such year of the operator's license
16 revocation. Notwithstanding any other provision of law, if the
17 owner was convicted of a second or subsequent violation of section
18 60-6,196 or 60-6,197, no ignition interlock device shall be ordered
19 by any court or state agency under any circumstances until at least
20 one year of the operator's license revocation or impoundment shall
21 have elapsed.

22 Sec. 7. A person commits aggravated driving under the
23 influence if while engaged in the operation of a motor vehicle in
24 violation of section 60-6,196:

25 (a) He or she operates the motor vehicle in order to flee
26 in such motor vehicle in an effort to avoid arrest for such
27 violation; or

28 (b) He or she has a concentration of sixteen-hundredths

1 of one gram or more by weight of alcohol per one hundred
2 milliliters of his or her blood or per two hundred ten liters of
3 his or her breath and has at least one prior conviction for a
4 violation of section 60-6,196, 60-6,197, 60-6,211.01, or
5 60-6,211.02.

6 (2) Aggravated driving under the influence is a Class IV
7 felony. The court shall, as part of the judgment of conviction,
8 order the person not to drive any motor vehicle for any purpose for
9 a period of at least one year and not more than fifteen years and
10 shall order that the operator's license of such person be revoked
11 for the same period. Such orders shall be administered upon
12 sentencing, upon final judgment of any appeal or review, or upon
13 the date that any probation is revoked.

14 Sec. 8. Original sections 28-106, 28-306, 60-601, and
15 60-6,197.01, Revised Statutes Supplement, 2002, and sections
16 60-4,110 and 60-4,118.06, Revised Statutes Supplement, 2003, are
17 repealed.